

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.1875 OF 2023

**CHANDRAKANT ANKUSH KAKADE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicants : Mr. Nilesh S. Ghanekar
APP for Respondent No.1 : Mr. S.B. Narwade.
Advocate for Respondent No .2 : Mr. Sanket S. Palnitkar.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 1st NOVEMBER, 2023

ORDER :-

The applicant seeks regular bail in connection with Crime No.322 of 2023 registered with Cantonment (Chhawani) Police Station, Dist. Aurangabad for the offences punishable under Sections 363, 376(3), 354(d) of the IPC and Sections 6 and 12 of the POCSO Act, 2012.

2. The investigation was set in motion on the basis of information given by the victim herself. She is a minor aged about 14 years and 11 months. She alleges that she had acquaintance with the applicant/accused. They were regularly in contact with each other through mobile on social media. Since 2022, the accused/applicant used to call her on mobile phone and also visit their shop. The applicant/accused was pursuing her to maintain love affair. He also expressed his desire to marry. She alleges that on 10.5.2023, on

persuasion of applicant, she visited the University area alongwith applicant, where applicant had established sexual intercourse with her. Consequently, she conceived pregnancy. Accordingly, FIR is registered.

2. The applicant/accused is arrested on 22.7.2023. Since then he is behind bars. The prayer of the applicant for grant of bail has been rejected by the Sessions Court.

3. Mr. Nilesh Ghanekar, learned advocate would submit that the applicant-accused is aged about 19 years and it is a case of love affair between the applicant and the victim. He invited attention of this court to the history narrated by the victim at the time of her medical examination in pursuance of the registration of FIR, wherein, she clearly states that even parents of the applicant and victim had consented for their marriage and they had consensual sexual relationship at the home. Looking to the narration of the history, it is urged that no offence can be made out against the applicant.

4. Learned APP, strongly opposes the prayer for grant of bail and submits that considering the age of the victim, her consent is immaterial. She is a child within the meaning of POCSO Act. Therefore, even consensual sexual relationship is sought to be brought on record, that itself is not ground to escape from the rigors of POCSO Act.

5. Having considered the submissions advanced, it is apparent that age of the victim is about 15 years, whereas, the age of the applicant is about 19 years. In history narrated before the medical officer at the time of her examination she had stated about her love affair with

applicant supported by the parents. The physical relationship between the applicant and the victim was consensual. Although considering the age of the victim the provisions of POCSO Act are invoked, taking into account, the circumstances leading to registration of FIR, the inter-se relationship between the applicant and the victim and respective age, further detention of the applicant need not be continued. Hence, a case is made out for grant of bail.

ORDER

- (i) The application is allowed.
- (ii) The applicant – Chandrakant Ankush Kakade, be released on bail on furnishing P.B. and S.B. of Rs. 50,000/- with one solvent surety of the like amount, in Crime No. 322 of of 2023 registered with Cantonment (Chhawani) Police Station, Dist. Aurangabad for the offences punishable under Sections 363, 376(3), 354(d) of the IPC and Sections 6 and 12 of the POCSO Act, 2012. on the following conditions :-
 - [a] The applicant shall tamper with the prosecution evidence.
 - [b] The applicant shall not establish contact with the informant/victim or any other witness named in the charge sheet.
 - [c] The application stands disposed of.

**[S.G. CHAPALGAONKAR]
JUDGE**

grt/-